

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 98-0496P

Gross Income Tax

Fiscal Years Ending 09/30/94, 09-30-95, 09-30-96

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE(S)

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer, in letters dated July 29, 1998 and September 2, 1998 requested a waiver of penalties for fiscal years ending September 30, 1994 and September 30, 1995.

Taxpayer states it felt that the zero tax liability that was reported on the tax return was reasonable since they had an NOL for these periods. Further, they state they just started operations in Indiana and the income tax returns were prepared in California. Taxpayer believed he was not subject to the gross receipts tax because they had no customers in Indiana and all sales were invoiced to customers outside Indiana. Taxpayer feels no penalties should be assessed in this situation.

I. **Tax Administration** – Penalty

DISCUSSION

At issue is whether the taxpayer was negligent in reporting and remitting gross income tax.

Taxpayer failed to report pick-up sales in taxable gross receipts. 45 IAC 1-1-119 (b) clearly states that sales to nonresidents where the buyer accepts the goods or he takes actual delivery within the State are taxable outshipments.

02980496P.LOF

PAGE #2

Taxpayer has been in business in Indiana since October 1992. Although tax returns are processed in California, a taxpayer must make itself aware of the tax laws in the state in which he does business.

The Department finds that the taxpayer was negligent in not making itself aware of the Indiana tax laws, therefore, the request for penalty waiver is denied.

FINDING

Taxpayer's protest is denied.